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HAROLD B. WILLEY, C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 524

ARTHUR T. GALT, *Petitioner*,

v.

COMMISSIONER OF INTERNAL REVENUE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statutes and regulations involved	2
Statement	3
A. The Basic Facts	3
B. The Income Tax Issue	6
C. The Gift Tax Issue	6
D. The Decision of the Court of Appeals	8
Reasons for granting the writ	8
Conclusion	16
Appendix A—Opinion Below	17
Appendix B—Judgment Below	33
Appendix C—Order Denying Rehearing	34
Appendix D—Statutes and Regulations Involved	35
Appendix E—Concordance Between 1939 and 1954 Internal Revenue Codes	38

AUTHORITIES

CASES:

Barnes v. *Northern Trust Co.*, 66 Ill. App. 282	12
Blair v. *Commissioner*, 300 U.S. 5	9, 10, 11
Burnet v. *Guggenheim*, 288 U.S. 280	15
Commissioner of Internal Revenue v. *Blair*, 83 F. 2d 655, reversed 300 U.S. 5	10
Commissioner v. *Sunnen*, 333 U.S. 591	9, 13
Corliss v. *Bowers*, 281 U.S. 376	9
Crosby v. *Loop*, 13 Ill. 625	11
Dixon v. *Niccolls*, 39 Ill. 372	11

Page

Estate of Ellsworth, In re, 310 Ill. App. 223, 33 N.E. 2d 887 11
Estate of Sanford v. *Commissioner*, 308 U.S. 39.... 15
Farkas v. *Commissioner*, 170 F. 2d 201 12
Fleming v. *Dillon*, 370 Ill. 325, 18 N.E. 2d 910..... 12
Harrison v. *Schaffner*, 312 U.S. 579 9
Hawaiian Trust Co. v. *Kanne*, 172 F. 2d 74..... 12
Hefling v. *Van Zandt*, 60 Ill. App. 662, affirmed except as to costs, 162 Ill. 162, 44 N.E. 424 12
Helvering v. *Clifford*, 309 U.S. 331 .....10, 13
Helvering v. *Horst*, 311 U.S. 112 9
Lawrence v. *Oglesby*, 178 Ill. 122, 52 N.E. 945 12
Mettler v. *Warner*, 243 Ill. 600, 90 N.E. 1099 11
Robinette v. *Helvering*, 318 U.S. 184 15
Smith v. *Shaughnessy*, 318 U.S. 176..... 15
Wineman v. *Hughson*, 44 Ill. App. 22 12

FEDERAL STATUTES:

Internal Revenue Code of 1939
Sec. 22(a) 13, 35
Sec. 1000(a) 15, 35
Sec. 1000(b) 15, 35

Internal Revenue Code of 1954
Sec. 61(a) 13, 38
Sec. 2501(a) 16, 40
Sec. 2511(a) 16, 40

ILLINOIS STATUTES:

Illinois Rev. Stat. (1953):
c. 8, § 37s-37s.34 3
c. 30, § 2 .....12, 36
c. 80, § 14 .....12, 37
Laws of Ill., 1945, pp. 56-65 3

MISCELLANEOUS:

H. R. Rep. No. 1337, 83rd Cong., 2d sess. 39, 41
Sen. Rep. No. 1622, 83rd Cong., 2d sess.....38, 40, 41
Treas. Reg. 108, § 86.2 .....15, 36

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ARTHUR T. GALT, your petitioner, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit, entered in the above-entitled case on June 23, 1954.

OPINIONS BELOW

The opinion of the Tax Court (R. 307-334) is reported at 19 T. C. 892.[1] The opinion of the Court of Appeals (*infra*, Appendix A, pp. 17-32) is reported at 216 F. 2d 41.

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[1] Inasmuch as nine additional copies of the record as printed for the use of the Court of Appeals have been filed pursuant to Rule 21(4), the opinion of the Tax Court is not appended to this Petition. Rule 23(1)(i).

JURISDICTION

The judgment of the Court of Appeals was entered on June 23, 1954 (*infra*, Appendix B, p. 33). A petition for rehearing was denied on October 11, 1954 (*infra*, Appendix C, p. 34). The jurisdiction of this Court is invoked under the provisions of 28 U. S. C. § 1254(1).

QUESTIONS PRESENTED

1. Whether, where a lessor of real property has irrevocably given to his three adult sons a stated percentage of contingent rentals due under a 20-year lease for its entire term, and has been assessed a gift tax based on the value of the property interest thereby given his sons as of the date of such gift, the donor is thereafter liable for income tax on the amounts of contingent rentals paid to the sons by the lessee.

2. Whether, where a lessor of real property has irrevocably given to his three adult sons a stated percentage of contingent rentals due under a 20-year lease whereby he divests himself of any control over or right to receive such rentals, and pursuant to which as a matter of state law the sons have an enforceable right against the lessee for such rentals during the entire 20-year term, the rentals so received by the sons are taxable to the father as his income.

3. Whether, where the issue is as to the taxability for income tax purposes of a lessor for that portion of unpredictable income from a lease which he has given to his sons, it is immaterial that his gift is irrevocable or that the sons will receive income pursuant thereto over a 20-year term.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set out in Appendix D, *infra*, pp. 35-37.

STATEMENT

A. *The Basic Facts.* For purposes of this Petition we accept the facts stated in its opinion (Appendix A, *infra*, pp. 18-20) by the court below:

"Petitioner, in 1922, acquired certain real estate (sometimes referred to as the 'Fair Grounds' property), situated near Maywood, Illinois, a suburb of Chicago [R. 308, 83]. From that time until 1946, the property was used for numerous purposes, with the income derived by the taxpayer little, if any, more than sufficient to pay the real estate taxes [R. 308, 85]. In 1939, the property was leased to the Cook County Fair Association which improved the property by construction of a track for harness races and a grandstand and other permanent improvements for the accommodation of spectators [R. 308; R. 85-86, 108-109; Pet. Ex. 4-8, R. 109, 220-224]. This venture was unsuccessful and taxpayer continued to receive little, if any, net income [R. 308; R. 86, 107-108]. In July, 1945, the State of Illinois legalized parimutuel harness racing in Illinois [Laws of Ill., 1945, pp. 56-65; Ill. Rev. Stat. (1953), c. 8, §§ 37s-37s.34] and on February 26, 1946, petitioner entered into a twenty-year lease with Maywood Park Trotting Association, Inc., as lessee (sometimes referred to as Maywood Park) [R. 69-70, 308]. The lease covers fifteen pages of the printed record and contains forty-six sections [R. 10-26].

"At this point, we think it material to relate only a portion of Secs. 1, 2 and 4 [R. 11, 12, 13]. After providing that the lessee was to have and hold the property from January 2, 1946 until the 31st day of December, 1965, Sec. 1 provided that the lessee, in consideration of the demise, covenanted and agreed to pay the lessor as rent for said demised premises the sum of seven hundred thousand dollars ($700,000), at the rate of thirty-five thousand dollars ($35,000) per year, with the first annual rental payable [by] July 1, 1946, and thereafter the annual rental was to be paid in advance on January 2 of each and every

year of the term [R. 11]. This annual rental was characterized as 'the guaranteed fixed rental' [R. 11]. Sec. 2 provided that the lessee, in addition to the guaranteed fixed rental provided in Sec. 1, pay the lessor the following sums:

> " 'One per centum of the First Ten Million ($10,000,000) Dollars wagered on said premises in any one calendar year and * * two per centum on all amounts wagered in excess of Ten Million ($10,000,000) Dollars in any one calendar year.' [R. 12]

"Sec. 4 provided:

> " 'Any sums that may be due under the provisions of Section 2 of this lease shall be paid as follows:
>
> 40% to Arthur T. Galt, Lessor
> 20% to Arthur T. Galt, Jr.
> 20% to Raymond M. Galt
> 20% to William C. Galt
>
> " 'The above persons designated to receive 20% each are sons of the Lessor who have irrevocably been given said interests by the Lessor, Arthur T. Galt, and any sums due them hereunder shall be paid to them by mailing the amount so due to their respective residences.' [R. 13.]

"Arthur T. Galt, Jr., Raymond M. Galt and William C. Galt, named in Sec. 4 of the lease, at the time of its execution were adults [R. 117, 315].[2] On February 26, 1946 (the same date on which the lease was executed), petitioner delivered to each of the three named sons a letter which, after reciting facts with reference to the execution of the lease, stated in part as follows:

> " 'I want each one of you boys to have a part of the proceeds, if any there shall be, from the wagering that the Lessee speculates may take place. I therefore give you each a one-fifth (⅕) interest under the

[2] [The sons having been born in 1912, 1915, and 1917 (R. 117), they were accordingly 34, 31, and 29 years of age when the lease was executed.]

contingent percentage clause of the lease. This gift to each of you is absolute and irrevocable and I have provided in the lease that any sums, when, as and if, they become due, shall be payable to each of you in the amount of 20% directly by the Lessee. I have by proper provision in the lease divested myself of all dominion and control of the amounts if any should become due to the extent of the gift I am hereby giving you and further by this evidence of the gift to you, divest myself of any control or dominion over such amount. * *

" 'You will all know of course, that in making this gift, I am prompted by my love and affection for you. I hope with all my heart that there will be revenue coming and that you may enjoy the share that I have given you in such possible revenue, and take care of it, if the sum coming to you should be enough to provide you with more than a small part of your current living expenses.

" 'I am now in my sixties and never felt better or was in better health in my life than I am at this date, and as I come from a long lived family—my father having died at about ninety-two, I fully expect to live during the entire life of the lease, and share with you the fullest association of our mutual company.

" 'Assuring you of my fondest paternal affection,

Your father

/s/ ARTHUR T. GALT.' [R. 27-29, 71, 313-314.]

"During 1946, the percentage rental provided in Sec. 2 of the lease amounted to $39,873.05, of which $15,949.22 (40%) was paid to petitioner and $7,974.61 (20%) to each of the three sons, as designated in the lease [R. 70, 314-315]. Maywood Park, on October 22, 1946, made payment to each of the sons by its check, in which each was named as payee [R. 315; Pet. Ex. 13-15, R. 169-170, 229-231]. A letter accompanying each check stated that the money thus paid 'is your share under the terms of the lease' [R. 315; Pet. Ex. 12, R. 169, 228; Pet. Ex. 16-17, R. 170, 233-234]. These checks were endorsed by the sons, deposited in their

respective bank accounts and reported in their separate income tax returns as income [R. 70, 315-316]. Petitioner in his federal income tax return for 1946 reported as rental income received from Maywood Park in that year in the amount of $50,949.22 ($35,000, the guaranteed rental, plus $15,949.22, 40% of the percentage rental) [R. 71, 316]. He did not report any of the amounts paid by Maywood Park to his sons [R. 70, 316]."

B. *The Income Tax Issue.* The Commissioner determined a deficiency of $69,622.52 in the petitioner's income tax, resulting in substantial part from inclusion in his income of the aggregate of $23,923.83, received during that year by the sons as rental from Maywood Park (R. 37-46, 316). On petition for redetermination of the deficiencies asserted by the Commissioner (R. 30-65 [Tax Ct. No. 29528]), the Tax Court sustained that part of the income tax deficiency which was based upon taxing to the petitioner the $23,923.83 paid by Maywood Park to the three sons (R. 321-328, 334).[3]

C. *The Gift Tax Issue.* On the gift tax issue, also, we are content to take the facts from the opinion below (*infra*, pp. 20-21):

"Petitioner filed a federal gift tax return for the year 1946, and in a schedule attached showed that on February 26, 1946, he made a gift to his sons of 60% of sums that might become due under the provisions of Sec. 2 of the lease dated February 26, 1946 [R. 319-320; Resp. Ex. B, R. 121, 252-253]. The schedule stated that the percentages to be received by the sons were contingent and uncertain and of no value [R. 320; Resp. Ex. B at R. 253]. Each of the sons filed a donee's information return of gifts which stated that the gifts were received on February 26, 1946, and that they had no value [R. 320; Resp. Ex. B, at R. 254, 256, 258].

[3] Other amounts of income that entered into the deficiency found by the Tax Court were not pressed before the Court of Appeals, see C.A. Op., p. 21, *infra*, and are not in issue now.

"The Commissioner determined a deficiency in petitioner's gift tax for 1946 in the amount of $68,079.00, and in a memorandum attached to his deficiency notice stated:

> " 'The value of 60% of the income under the percentage clause of the twenty year lease with Maywood Park Trotting Association, Inc., given to the donor's three sons is held to be $337,500.00 on the basis of information now of record, or in the alternative the gift to the three sons in 1946 is the 60% of the percentage income, or $23,923.83, the amount paid in to the sons under the lease.' [R. 9, 320.]

"The Commissioner's assertion of a deficiency based upon a valuation of $337,500.00 rested on the premise that petitioner made a gift to his sons on February 26, 1946 (the date of the execution of the lease), but the record contains no information as to the manner or means by which that amount was ascertained other than that stated in the deficiency notice, that it was 'on the basis of information now of record' [R. 9, 320]."

Petitioner commenced a separate proceeding in the Tax Court for a redetermination of the gift tax deficiency asserted by the Commissioner (R. 5-29 [Tax Ct. No. 27844]), and both cases were consolidated for trial and decision (R. 73; C.A. Op., *infra*, pp. 17-18). Then, as the court below said (C.A. Op., *infra*, pp. 21-22; R. 79-80)—

"At the inception of the hearing before the Tax Court, the Commissioner shifted his position on the gift tax issue by disclaiming the theory on which his deficiency had been asserted, that is, that petitioner made a gift to his sons on February 26, 1946, and advancing instead the theory that a gift was made during the year in the amount of $23,923.83." As counsel for the Commissioner said in the Tax Court (R. 98), "the Government's position is that its primary position is repugnant to its income tax position."

Counsel for the petitioner contended before the Tax Court, as petitioner had asserted in his gift tax return, that the gifts were made on February 26, 1946, but con-

ceded that the gifts instead of having no value, had a value of $34,090.00 on that date, and proved that valuation by two expert witnesses (R. 86-107, 174-185, 190-192).

The Tax Court did not undertake to determine when the gift was made or what value it then had, but decided the case on the basis of what the Commissioner was asking for, viz., a tax on a gift in the amount of $23,923.83 (C.A. Op., *infra*, p. 22; R. 328-329), which was less than the sum on which petitioner admitted owing a gift tax.

D. *The Decision of the Court of Appeals.* Petitioner filed a petition for review of the decisions of the Tax Court on both the income tax and gift tax determinations (R. 335-341). The Commissioner filed but subsequently abandoned a cross-petition to review the Tax Court's decision in the gift tax case (R. 345-346; C.A. Op., *infra*, p. 18).

The Court below affirmed the Tax Court on the income tax issue (C.A. Op., *infra*, pp. 23-27, 32; C.A. Judgment, *infra*, p. 33).

On the gift tax issue, the Court of Appeals below reversed, holding that the gift was made on February 26, 1946, and that on the uncontroverted evidence its value at that time was $34,090; the case was remanded to the Tax Court with directions to redetermine petitioner's deficiency on that basis (C.A. Op., *infra*, p. 32; C.A. Judgment, *infra*, p. 33).

A petition for rehearing filed by the taxpayer was denied (*infra*, p. 34); the Commissioner did not question the ruling in any aspect.

REASONS FOR GRANTING THE WRIT

By holding that petitioner is liable for a gift tax on the value of the "property right * * * to receive income" (C.A. Op., *infra*, p. 30) which he conveyed to his sons, and is simultaneously liable for a tax on the income which the sons receive by virtue of that gift, the court below has decided that the owner of a tree who gives away a branch

thereof, paying gift tax on the value of the branch, must still pay income tax on the fruit which grows on that branch. It will occasion no surprise that this self-contradictory result runs counter to numerous decisions of this Court and is in consequence in conflict with rulings in other circuits.

I.A. That the irrevocable assignment of an indefeasible right to receive income over a long period of years divests the assignor of income tax liability on income thereafter accruing to the assignee was, we had supposed, settled by *Blair* v. *Commissioner*, 300 U. S. 5. As Chief Justice Hughes there said for the Court (300 U. S. at 12), "The one who is to receive the income as the owner of the beneficial interest is to pay the tax."

We recognize, of course, the countervailing principle (C.A. Op., *infra*, p. 23) "that one who retains property from which income is produced is obligated to account therefor even though he has assigned it, thereby divesting himself of all control, and even though it is actually received by the assignee and not by him."

But the indicia of ownership plus control that were found wanting in the cases which elucidated what we call the countervailing principle are all present here. Here, unlike *Helvering* v. *Horst*, 311 U. S. 112, 118, there was a gift of income producing property, not merely of income. Here, unlike *Harrison* v. *Schaffner*, 312 U. S. 579, 581-582, the assignor had no actual command over the income in question. Here, unlike *Commissioner* v. *Sunnen*, 333 U. S. 591, 607, the father had lost all power to defeat the sons' receipt of income. In this case, "the unfettered command" (*Corliss* v. *Bowers*, 281 U. S. 376, 378) to which the income was subject was the command of the sons.

The court below (C.A. Op., *infra*, p. 30) recognized that "petitioner's sons as donees at the time of the execution of the lease and assignments acquired a property right, that is, a right to receive income, a right to parti-

cipate in the rental proceeds." This circumstance under the decisions cited would plainly place the present case on the *Blair* side of the hitherto established line; and, since petitioner clearly ceased to be owner of the corpus *pro tanto*, the case would fall outside the rule of *Helvering* v. *Clifford*, 309 U. S. 331, 335. But the court below went on to hold that the income was taxable to petitioner none the less.

Distinction between this case and *Blair* on the ground that no specific conveyance of the corpus was involved in the instant arrangement is not possible. Neither was there any specific conveyance of the corpus in *Blair*. Both here and in the *Blair* case all that was specifically assigned was an irrevocable right to receive income. Here are the relevant excerpts from the two instruments:

BLAIR[4]	GALT[5]
That the said party of the first part, in consideration of love and affection and One Dollar ($1) * * * does hereby sell, assign, transfer, * * * an interest amounting to * * * $6,000 for the remainder of the current calendar year, and * * * $9,000 in each calendar year thereafter in the net income which the said party of the first part now is, or may hereafter be, entitled to receive during his life from the Trustees under the Will of William Blair, Deceased * * * and the said party	Section 4. Any sums that may be due under the provisions of Section 2 of this lease shall be paid as follows: 40% to Arthur T. Galt, Lessor 20% to Arthur T. Galt, Jr. 20% to Raymond M. Galt 20% to William C. Galt The above persons designated to receive 20% each are sons of the Lessor who have irrevocably been given said interest by the Lessor, Arthur T. Galt, and any sums due them here-

[4] *Commissioner of Internal Revenue* v. *Blair*, 83 F. 2d 655, 658, note * * (C.C.A. 7), reversed, 300 U.S. 5.

[5] R. 13.

BLAIR	GALT
of the first part hereby authorizes * * * said party of the second part * * * to receive and receipt to the Trustees under the Will * * * of the income and moneys which shall at any time become payable to said party of the first part under or by virtue of the terms and provisions of the said Will * * *. All payments hereunder shall be made in person to said party of the second part and not upon any written or verbal order nor upon any assignment, nor upon any transfer by operation of law, and shall cease upon the death of either party hereto. * * *	under shall be paid to them by mailing the amount so due to their respective residences. * * *

Very obviously, there is no difference in substance, and hardly any in form, between the two documents. The *Blair* case arose in Illinois and was decided under Illinois law. And in the instant case, as we can demonstrate in brief outline, the sons' property rights as a matter of Illinois law are as clear as the assignees' property rights were in *Blair*.

Rent to accrue is a chattel real (*Dixon* v. *Niccolls*, 39 Ill. 372), and a devise of rents is a devise of the real estate itself (*Mettler* v. *Warner*, 243 Ill. 600, 90 N.E. 1099), so that no part thereof passes to the executor (*In re Estate of Ellsworth*, 310 Ill. App. 223, 33 N. E. 2d 887). Moreover, rents to accrue can be assigned apart from the reversion (*Crosby* v. *Loop*, 13 Ill. 625, 627;

Hefling v. *Van Zandt,* 60 Ill. App. 662, affirmed except as to costs, 162 Ill. 162, 44 N.E. 424; Ill. Rev. Stat. (1953), c. 30, § 2 (*infra,* pp. 36-37)), and the assignee of such rents may maintain an action thereon in his own name (*Wineman* v. *Hughson,* 44 Ill. App. 22; *Barnes* v. *Northern Trust Co.,* 66 Ill. App. 282; Ill. Rev. Stat. (1953), c. 80, § 14 (*infra,* p. 37)). Finally, where, as here, the provision for payment of a portion of the rent to the lessor's sons is included as a part of the lease, the rights of the sons are additionally enforceable on the footing that they inured to a third-party beneficiary, who in Illinois has independent standing to sue on the contract (*Lawrence* v. *Oglesby,* 178 Ill. 122, 52 N. E. 945; *Fleming* v. *Dillon,* 370 Ill. 325, 18 N. E. 2d 910).

Consequently, the court below properly held (C.A. Op., *infra,* p. 30) that the sons acquired a property right, "a right to receive income, a right to participate in the rental proceeds."

B. The ruling below is in square conflict with the decision of the Ninth Circuit in *Hawaiian Trust Co.* v. *Kanne,* 172 F. 2d 74, and with that of the Fifth Circuit in *Farkas* v. *Commissioner,* 170 F. 2d 201. Both involved irrevocable assignments of income which put that income beyond the reach of the assignor.

The court below stated (C.A. Op., *infra,* p. 27) that those cases "are distinguishable on the ground that here there was no assignment of an interest in the property which produced the income or in the lease which provided for its distribution but only an assignment of income." But thereafter the court below went on to say (C.A. Op., *infra,* p. 30), speaking of the present case, "We think it is hardly open to dispute but that petitioner's sons as donees at the time of the execution of the lease and assignments acquired a property right, that is, a right to receive income, a right to participate in the rental proceeds."

Thus, actually, this case is distinguishable from *Hawaiian Trust* and *Farkas* only in the Pickwickian sense that while

the decisions there were in favor of the several taxpayers, the ruling here upheld the Commissioner.

C. The tax here in question was imposed pursuant to Sec. 22(a) of the Internal Revenue Code of 1939. The corresponding provision of the Internal Revenue Code of 1954 is Sec. 61(a). As we point out in more detail in Appendix E, *infra*, pp. 38 *et seq.*, there is no change in substance so far as the present case is concerned.

II. The court below said that "it is immaterial whether the assignment here was revocable or irrevocable, or whether it is for a short or long term" (C.A. Op., *infra*, p. 27; see also *infra*, pp. 23, 29).

We think it plain that this approach ignores the very distinctions which this Court has held controlling in many cases. E.g., *Helvering* v. *Clifford*, 309 U. S. 331; *Commissioner* v. *Sunnen*, 333 U. S. 591. These distinctions are supplementary to the one already canvassed, viz., between a gift of income and a gift of income-producing property. But there will be time for more detailed discussion if this case is heard on the merits.

III. The disregard by the court below of settled principles is highlighted by the gift tax aspect of its decision.

As we have shown, *supra*, p. 7, before the Tax Court the Commissioner disclaimed the basis on which the gift tax deficiency had been asserted, viz., that petitioner had made a gift to his sons on February 26, 1946, saying (R. 98), "the Government's position is that its primary position is repugnant to its income tax position." Accordingly, the Commissioner proceeded on the footing that a gift was made during the calendar year after the date of the lease in the amount of the rentals actually received by the sons during that particular calendar year (R. 79-80).

Petitioner changed the position taken in his gift tax return only to the extent of admitting that the gift had value, and, despite considerable difficulty in convincing the Judge of the Tax Court who heard the evidence that such

value was relevant (R. 86-107), eventually proved that the fair market value of the gift when made was $34,090 (R. 174-185, 190-192).

As we have also shown, the Tax Court held that, since the Commissioner ultimately claimed only a deficiency based on the amount of the income actually received by the sons from Maywood Park during the year, viz., $23,923.83 received in October, the deficiency should be measured by the latter amount, and the Tax Court did not determine the value of the gift when made on February 26, 1946 (*supra*, p. 8; R. 328-329).

It cannot be disputed that, as the court below said (C.A. Op., *infra*, p. 22), "the Tax Court's decision must rest upon the implied finding that the gifts were made on October 22, 1946"—the date the lessee paid the income to the sons (R. 315; Pet. Ex. 12-13, R. 169, 228-229; Pet. Ex. 14-17, R. 170, 230-234). Therefore, again to quote from the opinion below (C.A. Op., *infra*, p. 29),

> "While the [Tax] court did not expressly so state, it is implicit in its holding that petitioner would be liable each succeeding year for a gift tax upon amounts paid to his sons under the terms of the lease. In fact, that was respondent's contention before the Tax Court, as shown * * * from the opinion of the Tax Court, wherein it is stated that respondent 'assumed the basic position that petitioner made gifts to his sons each year as, and in the amounts that, the rentals were paid to them year by year.'[6] This incongruous result would be in prospect notwithstanding the fact that petitioner committed no affirmative act with reference to payments to his sons other than that performed on February 26, 1946, when the assignments were made."

Petitioner is in complete accord with the Court of Appeals' holding that he made a present gift to his sons on February 26, 1946, since on that day he lost economic

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[6] See also the Tax Court's "finding" (R. 320) that "The amounts of $7,974.61 constituted gifts by petitioner during 1946 to each of his three sons."

control over the portion of the rental income which he irrevocably gave to his sons under the terms of the lease. The result cannot be otherwise under the statute (Sec. 1000(a), 1000(b), 1939 IRC [*infra*, pp. 35-36]), the regulation (Treas. Reg. 108, § 86.2 [*infra*, p. 36]), or the decisions (*Burnet* v. *Guggenheim*, 288 U. S. 280; *Estate of Sanford* v. *Commissioner*, 308 U. S. 39; *Smith* v. *Shaughnessy*, 318 U. S. 176; *Robinette* v. *Helvering*, 318 U. S. 184).

Petitioner is likewise in complete accord with the Court of Appeals' characterization of the subject-matter of the gift (C.A. Op., *infra*, p. 30) "as a property right, that is, a right to receive income, a right to participate in the rental proceeds." As a matter of Illinois law (*supra*, pp. 11-12), no other conclusion is possible.

Where we part company with the court below is on its further holding, that the petitioner must pay an income tax on the income received by his sons as a consequence of the gift already taxed. Such a holding is, as the Commissioner recognized (R. 98), "repugnant" to the gift tax ruling. For that holding means, in graphic terms, that where the owner of the tree gives away a branch, and is held liable for a gift tax computed on the value of the branch, he is nevertheless also liable for income tax on the fruit thereafter received from that branch.

A result so inherently self-contradictory involves such thoroughgoing disregard of principles heretofore established by this Court as to call for review of the ruling below.[7]

B. In this instance, also, the enactment of the Internal Revenue Code of 1954 has effected no changes; Sections 1000(a) and 1000(b) of the 1939 Code have their counter-

[7] If the decision of the Court of Appeals is to stand, then there are also raised innumerable doubts of the income-taxability of petitioner's successor in interest if the petitioner dies or otherwise transfers his reversion in the leased property, as well as doubts respecting the income-taxability of the sons on the rents now receivable by them or hereafter received by their successors in the event they die or otherwise transfer their rights to the receipt of these rents.

parts without change of substance here material in Sections 2501(a) and 2511(a) of the later revision. The details are set forth in Appendix E, *infra*, pp. 38 *et seq.*

CONCLUSION

The ruling below injects uncertainty and inconsistencies into the tax system. This petition for a writ of certiorari should therefore be granted.

Respectfully submitted.

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